

distinctly claim the subject matter which Applicants regard as the invention. It is the contention of the Detailed Action that the specification lacks support for a non-necked nonwoven within the specification. While the presently rejected claims have been canceled, Applicants respectfully point to page 13, line 12, of the specification, wherein they teach that a cross direction extensibility of the facing material may alternatively be achieved by a grooved roll extension process, which is an alternative form of mechanical distortion of the web which does not require necking. The specification further states at page 13, line 22 to page 14, line 1, that machine direction extensibility can be imparted by creping or crimping the facing material in the machine direction.

Claim Rejections - 35 U.S.C. §103

Per paragraph 5 of the Detailed Action, Claims 22, 23, and 26-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,883,028 to Morman et al. (Morman '028) in view of U.S. Patent No. 5,114,781 to Morman (Morman '781) and Kadolph et al., *Textiles*, 1998, Prentice Hall Inc., 8th Ed., pp. 76 and 395 (hereinafter "Kadolph"). These rejections are respectfully traversed.

The Detailed Action admits, at paragraph 1, that Morman '028 and Morman '781 fail to teach a biaxial elastic stretch, breathable laminate obtained by means other than necking.

Kadolph teaches only that creping may be used to produce a good hand (feel) to a thermoplastic fiber. Kadolph fails to teach or suggest any use of creping to achieve extensibility of a fabric or the use of a creped nonwoven sufficient to provide extensibility within a breathable elastic laminate.

Claim 22 is now limited to a spunbond nonwoven web which is creped to achieve machine direction stretch. Per the above discussion, the cited references themselves are not believed to provide any suggestion combinability to achieve the presently claimed invention. Claims 23 and 26-36 depend from amended Claim 22 and incorporate all

limitations thereof. Applicants therefore respectfully request withdrawal of the present rejections.

Per paragraph 6 of the Detailed Action, Claim 37 is rejected as obvious over Morman '028 in view of Morman '781. Claim 37 now specifically requires that the creping of the nonwoven facing result in the machine direction stretch. Per the above discussion, neither of Morman '028 or Morman '781 teaches or suggests creping to achieve a biaxially stretchable laminate. It is further noted that with respect to independent Claim 37, the Detailed Action does not address the limitation, added by Applicants' first amendment, prior to the final Office Action, that the nonwoven facing must be creped. Thus Applicants respectfully request that a nonfinal action be issued giving a reasoned explanation of why the Morman '028 and '781 references are believed to suggest this limitation, in order that Applicants may be given a chance to fairly respond. With regard to Claims 13 and 36, also addressed under paragraph 6, Claim 13 has been canceled. Claim 36, as dependent from Claim 22 and incorporating the creping limitations thereof, is also now believed to be allowable.

Per paragraph 7, Claim 39 is rejected as obvious over Morman '028 in view of Morman '781 in view of Roe et al, U.S. Patent No. 5,554,143 (hereinafter Roe). Roe further fails to teach any creping to achieve machine direction stretch. Claim 39, as dependent from Claim 37 and incorporating the creping limitations thereof, is also now believed to be allowable.

Per paragraph 8, Claims 1-10, 17 and 21 are rejected as obvious over Morman '028 in view of WO 98/29246. Each of these claims has been canceled by the present amendment.

Per paragraph 9, Claims 14-16 are rejected as obvious over Morman '028 in view of WO 98/29246 in view of McCormack, U.S. Patent No. 5,855,999. Each of these claims has been canceled by the present amendment.

Per paragraph 11 (sic), Claims 18-20 are rejected as obvious over Morman '028 in view of WO 98/29246 in view of Benson et al., U.S. Patent No. 6,129,801. Each of these claims has been canceled by the present amendment.

Request for Withdrawal of Finality

Applicants respectfully request that the finality of the Office Action of 05 November 2002 be withdrawn. Applicants further respectfully request that the amendments herein be entered and fully considered. Grounds of rejection were first proffered for Claim 22 by the Office in the Final Office Action. Claim 22 was not addressed by the Detailed Action of 20 May 2002. Thus, Applicants' previous Amendment of 30 July 2002 could not have necessitated the new grounds of rejection set forth in the Final Office Action.

It is further noted that with respect to independent Claim 37, the Detailed Action does not address the limitation, added by Applicants' first amendment, prior to the Final Office Action, that the nonwoven facing must be creped. Thus, Applicants must be given a reasoned explanation of why the Morman '028 and '781 references teach or suggest the invention set forth in Claim 37 and be given a chance to fairly respond to such reasoned explanation.

Conclusion

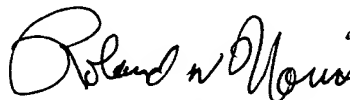
Applicants believe that this case is now in condition for allowance. A notice to that effect is earnestly solicited. If the Examiner feels that any issues remain upon consideration of the present amendment, the Examiner is invited to contact Applicants' undersigned attorney to discuss the case.

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Favorable consideration is requested.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

22. (Amended) A biaxial elastic stretch, breathable laminate, comprising:

a water vapor-permeable elastic film comprising a polymer selected from a group consisting of polyurethanes, polyether amides, polyester elastomers and combinations thereof; and

a spunbond nonwoven web, having machine direction stretch and cross direction stretch, bonded to the film, wherein the spunbond nonwoven web is [crimped] creped to achieve the machine direction stretch.

37. (Amended) A biaxial elastic stretch, breathable laminate fluid barrier, comprising:

a breathable elastic film; and

a necked nonwoven facing material that is creped in the machine direction to allow for machine direction stretch and subsequently bonded to the film.

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